

NTSB Order No. EA-4386

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 26th day of July, 1995

Respondent.

Docket SE-14092

Respondent, by counsel, filed a timely notice of appeal from the oral initial decision rendered by Administrative Law Judge Patrick G. Geraghty, on June 28, 1995, at the conclusion of an evidentiary hearing.² The appeal brief, however, which was due on July 5,³ was not filed until July 7, apparently because counsel mistakenly believed that weekends and holidays were not counted in determining the five-day period in which to submit the appeal brief.⁴

Miscalculation of the deadline to file an appeal brief or confusion over the applicable time period does not constitute

²By that decision the law judge affirmed an order of the Administrator revoking respondent's commercial pilot certificate for operating at least 61 flights when his certificate was suspended.

³Section 821.54(c) addresses the computation of time in emergency proceedings as follows:

(c) Computation of time. Time shall be computed in accordance with § 821.10, including the provision that Saturdays, Sundays, and legal holidays of the Board shall always be counted in the computation.

⁴Respondent argues that the responsibility for missing the deadline rests solely with his counsel, and that he should not suffer for his counsel's mistake. Nevertheless, counsel was his representative and the consequences of counsel's action or inaction fall upon respondent. An attorney, representing an airman before the Board, bears the responsibility for the proper performance of all matters related to the preservation of the airman's rights. Administrator v. Hamilton, NTSB Order No. EA-3583 at 2, n.3 (1992).

In Administrator v. Brown, 6 NTSB 1339, 1342 (1989), we stated:

a respondent's dissatisfaction, justified or otherwise, with the performance of his representative at an evidentiary hearing provides no ground either for upsetting the decision on the record ... or for ordering a new hearing.... In simplest terms, the Board is not the proper forum for resolving disputes that arise between respondents and those they chose to represent them in an enforcement action.

Cf. Administrator v. Richard, et al., 5 NTSB 2198, 2201 (1987) (decision by respondent's counsel to leave during the hearing is a matter between him and his clients).

good cause to accept the late filing. See Administrator v. TPI International Airways, NTSB Order No. EA-3868 (1993); Administrator v. Gulf Flite Center, Inc., NTSB Order No. EA-3689 (1992); Administrator v. Near, 5 NTSB 994 (1986). In fact, after rendering his initial decision, the law judge admonished the parties to be mindful of the strict time limitations for filing.⁵

Absent good cause to excuse the failure to file a timely appeal brief, the appeal must be dismissed. See Administrator v. Hooper, 6 NTSB 559, 560 (1988).⁶

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's motion to dismiss is granted, and
2. Respondent's appeal is dismissed.

HALL, Chairman, FRANCIS, Vice Chairman, and HAMMERSCHMIT, Member of the Board, concurred in the above order.

⁵The law judge stated:

Parties are cautioned that, since this is an emergency proceeding, that the time limitations for appeal purposes are severely limited and parties are referred specifically to the Board's rules for appeal provisions in emergency proceedings, because the Board is quite strict on the timeliness of the notice and also the supporting briefs.

(Initial Decision at 64.)

⁶Respondent misstates Board precedent when he claims that the Board has often noted its preference to proceed with a case on the merits rather than dismiss on a procedural matter. In Hooper, we discussed that, although prior to 1983, the Board maintained a policy of preference "to decide cases on their merits rather than on a procedural deficiency," from 1984 forward, "that policy was supplanted by a policy requiring good cause to justify the acceptance of late filings." Id. at 560.